

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

)
) MDL No. 1456
)

THIS DOCUMENT RELATES TO:

) Civil Action No. 01-CV-12257 PBS
)

THE BMS CLASS 1 SETTLEMENT

) Hon. Patti B. Saris
)

**CROSS-MOTION OF DEFENDANT BRISTOL-MYERS SQUIBB COMPANY
FOR A CONFERENCE ON A DISTRIBUTION PLAN
AND OTHER SETTLEMENT ISSUES**

Bristol-Myers Squibb Company (“BMS”) hereby moves this Court to grant BMS’s cross-motion for a conference to discuss distribution and other settlement issues so that the BMS Class 1 settlement may move forward. The parties have attempted to resolve their differences concerning distribution, but are unable to resolve their disagreement concerning this issue without intervention of the Court. The grounds for this motion are set forth in the attached Memorandum of Law and in the supporting Declaration of Lyndon M. Tretter. For the reasons set forth in those sources, BMS respectfully requests that the Court issue its motion and for such other relief as the Court deems just and proper.

Dated: Boston, Massachusetts
September 18, 2008

Respectfully submitted,

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By: /s/ Thomas E. Dwyer (BBO#139660)
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*Attorneys for Defendants Bristol-Myers
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Network Corporation and Apothecan, Inc.*

CERTIFICATE OF SERVICE

I, Joanna Wasick, hereby certify that on September 19, 2008, I have caused true and correct copies of the foregoing Memorandum of Defendant Bristol-Myers Squibb Company (1) in Opposition to Plaintiffs' Motion to Preliminarily Approve their Proposed Plan of Distribution for the BMS Class 1 Settlement; and (2) in support of its Cross-motion for a Conference on a Distribution Plan and Other Settlement Issues, with attached exhibits, to be served on all counsel of record by electronic service, pursuant to Paragraph 11 of the Case Management Order No. 2, by sending a copy to Lexis/Nexis for posting and notification to all parties.

Dated: New York, New York
September 19, 2008

/s/ Joanna Wasick